

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 7514

BILL NUMBER: HB 1788

NOTE PREPARED: Mar 21, 2003

BILL AMENDED: Mar 20, 2003

SUBJECT: Sale of Tobacco.

FIRST AUTHOR: Rep. Hasler

FIRST SPONSOR: Sen. Weatherwax

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: X

X

GENERAL

DEDICATED

FEDERAL

IMPACT: State

Summary of Legislation: (Amended) This bill provides that a cigarette distributor who has five consecutive years of good credit standing with the state is not required to post a bond as a condition of paying for revenue stamps within 30 days of the purchase date. The bill requires the Consumer Protection Division of the Office of the Attorney General to maintain a cigarette listing containing the names of all cigarette distributors that hold a registration certificate. The bill authorizes the Department of State Revenue to revoke a retailer's registration certificate or impose a civil penalty upon a retailer who fails to produce an invoice or other evidence that the cigarettes were purchased from a legitimate distributor, and permits the state to seize undocumented cigarettes.

The bill renames the Youth Tobacco Education and Enforcement Fund the Richard D. Doyle Youth Tobacco Education and Enforcement Fund. The bill requires a tobacco product manufacturer to: (1) certify that it is a participating manufacturer in the tobacco master settlement agreement or maintains a qualified escrow fund; and (2) list the manufacturer's brand families of cigarettes. It requires the Attorney General to electronically publish a directory of tobacco product manufacturers and brand families. The bill requires a foreign nonparticipating manufacturer to appoint an agent for service of process. It provides that the Department of State Revenue may: (1) revoke or suspend the license of; and (2) impose a civil penalty on; a distributor or stamping agent that affixes a stamp on or sells cigarettes of a manufacturer or brand family that is not listed in the directory. The bill allows the state to recover the costs of an action to enforce the certification requirements.

It prohibits cigarette manufacturers from requiring retailers to engage in certain display and advertising practices or other practices concerning another cigarette manufacturer as a condition to participate in certain marketing promotions. The bill requires certain retailers to provide employee assistance to purchase individual packages of cigarettes.

Effective Date: July 1, 2003.

Explanation of State Expenditures: (Revised) *Attorney General's Office:* This bill requires that cigarette manufacturers certify to the Attorney General and the Department of State Revenue (DOR) that they are in compliance with state law and are either participants in the Master Settlement Agreement or make the required deposits into a qualified escrow account. Under this proposal, the Attorney General would maintain an annual listing of cigarette manufacturers who are in compliance and publish the listing on the Access Indiana website. The bill also allows the Attorney General to establish rules associated with the enforcement of cigarette manufacturers' compliance with state law requiring them to either participate in the Master Settlement Agreement or contribute to a qualified escrow account. It is estimated that the Office could cover any costs associated with the bill's provisions using existing staff and resources. Additionally, some of the Office's costs may be offset through fees recovered from persons violating the bill's provisions. The Attorney General's Tobacco Litigation Division consists of two attorneys and a paralegal. The Division's operating budget is approximately \$200,000 each year.

Department of State Revenue: This bill would require the Department to develop rules and procedures to assist with the enforcement of tobacco manufacturers' certification and compliance. It is presumed that the Department can absorb any costs associated with the bill.

Alcohol and Tobacco Commission: This bill would require the Alcohol and Tobacco Commission to enforce the Cigarette Fair Trade Act. The Act is currently administered by the Audit Division of the Department of State Revenue. There are two people in the Department that work with the Act, among other duties. Depending upon the Commission's administration of the duties, the Commission could be required to hire additional staff. This bill does not contain an appropriation.

Explanation of State Revenues: (Revised) *Penalty Provisions:* The bill prohibits the sale of cigarettes from manufacturers not included on the Attorney General's listing of compliant manufacturers. The Department of State Revenue may impose a civil penalty of up to 500% of the retail value of cigarettes sold or \$5,000 for each violation of this provision. Penalties collected under this provision would be deposited in the Alcohol and Tobacco Commission's Enforcement and Administration Fund and the state General Fund. Additionally, a person who violates the bill provisions commits a deceptive act actionable by the Attorney General. If convicted, the court may order the sender to pay to the state the reasonable costs of the Attorney General's investigation and prosecution related to the action. A court may also order an injunction. If the injunction is violated, a civil penalty of up to \$15,000 may be assessed per violation. If a court finds that a person committed a deceptive act knowingly, the Attorney General may recover a civil penalty of a fine up to \$500 per violation on behalf of the state.

The bill would establish Class C infraction for certain retail establishments to display individual packs of cigarettes within the reach of consumers. If additional court cases occur, revenue to the state General Fund may increase if infraction judgments and court fees are collected. The maximum judgment for a Class C infraction is \$500, which is deposited in the state General Fund. If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed. 70% of the court fee would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Notwithstanding the criminal Class C infraction, tobacco retailers found to have violated the requirements of this bill, could be assessed a civil penalty of \$50 for a first violation, and up to \$500 for three violations in the previous 90 days. Penalties would be deposited in the Richard D. Doyle Youth Tobacco Education and Enforcement Fund. The fund, currently named the Youth Tobacco Education and Enforcement Fund, is administered by the Alcohol and Tobacco Commission and is currently funded with fine revenue collected

from retailers that sell tobacco products to minors. The fund is used for excise officer training, retailer education, and for the prevention of youth smoking. In FY 2002, the fund received approximately \$102,396 in fine revenue.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Class C Infraction:* If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of State Revenue; Attorney General's Office; Alcohol and Tobacco Commission.

Local Agencies Affected:

Information Sources: National Association of Attorneys General; Jennifer Thuma, Legislative Liaison, Attorney General's Office, 233-6143.

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